

No. 83-812

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1983

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GEORGE C. WALLACE, *et al.*,  
*Appellants*

v.

ISHMAEL JAFFREE, *et al.*,  
*Appellees*

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**On Appeal from the United States Court of Appeals  
for the Eleventh Circuit**

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**BRIEF OF CHRISTIAN LEGAL SOCIETY AND  
NATIONAL ASSOCIATION OF EVANGELICALS  
AS AMICI CURIAE SUPPORTING APPELLANTS**

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### **QUESTION PRESENTED**

Whether a state statute which authorizes teachers to announce a brief period of silence at the commencement of the school day for voluntary prayer or meditation is a reasonable accommodation of the spiritual needs of public school students to pray in school during the school day.

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 INTEREST OF THE AMICI CURIAE

The Christian Legal Society is a non-profit Illinois corporation founded in 1961 as a professional association of Christian judges, attorneys, law professors, and law students. Today it includes over 3,500 members throughout the United States. The Center for Law and Religious Freedom is a division of the Christian Legal Society founded in 1975 to protect and promote the freedom of Christians and others in the exercise of their religious beliefs. Christian Legal Society has been active before

the courts and Congress in advocating the need for government to accommodate the religious needs of the public school students in a neutral and non-coercive manner. For example, members of the Christian Legal Society represented the students in *Widmar v. Vincent*, 454 U.S. 263 (1981), and *Bender v. Williamsport Area School District*, 563 F. Supp. 697 (M.D. Pa. 1983), *appeal argued*, C.A. No. 83-3284 (3d Cir., Jan. 24, 1984), which concerned the free speech right of university and public school students to meet for extracurricular religious activities.

The National Association of Evangelicals, located in Wheaton, Illinois, is a non-profit association of evangelical Christian organizations, colleges, and universities, as well as some 36,000 churches from 74 denominations. It serves a constituency of 10 to 15 million people through its commissions and affiliates. The Association brings a special expertise to this case as a result of its participation as *amicus curiae* in *Widmar v. Vincent*, *supra*, and its work on proposed legislation to guarantee the free speech rights of public school students to engage in religious worship and discussion during their extracurricular activities.

The letters from the parties consenting to the filing of this brief are submitted herewith to the Clerk pursuant to Rule 36.2.

### STATEMENT

*Amici curiae* adopt and incorporate by reference the statement of the case appearing in the brief filed by the appellants George C. Wallace, *et al.*

### SUMMARY OF ARGUMENT

The spiritual needs of public school students do not suddenly disappear once the school day begins. For example, many students feel a strong need to pray in the classroom at the beginning of the school day. *Amici*

submit the present brief for the limited purpose of demonstrating the existence of this need and explaining why a brief period of silence at the beginning of the school day is a reasonable means of accommodating this need.

### ARGUMENT

#### **A State Statute That Authorizes Public School Teachers To Announce A Brief Period Of Silence At The Commencement Of The School Day Represents A Reasonable Accommodation Of The Spiritual Needs Of Public School Students To Pray In School During The School Day.**

In *Zorach v. Clauson*, 343 U.S. 306 (1952), this Court held that a public school may accommodate the need of students to engage in religious worship and instruction during the school day by releasing them from school for those purposes. *Id.* at 315. As this Court explained in *Zorach*, government "follows the best of our traditions and respects the religious nature of our people" by so accommodating the spiritual needs of public school students. *Id.* at 314; *see Lynch v. Donnelly*, 104 S.Ct. 1355, 1360 (1984).<sup>1</sup>

Indeed, this Court has required a public university to accommodate the religious speech of individual students by allowing them to meet on the same basis it allows

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<sup>1</sup> Government is permitted to accommodate the free exercise of religion in a number of other contexts as well. *See, e.g., Mueller v. Allen*, 103 S.Ct. 3062 (1983) (tuition tax credits); *Gillette v. United States*, 401 U.S. 437 (1971) (exemption from compulsory military service); *Quick Bear v. Leupp*, 210 U.S. 50 (1908) (use of public funds for sectarian education of Indians). Indeed, in some contexts religious accommodation is not only permissible, but required by the First Amendment. *See Thomas v. Review Board*, 450 U.S. 707 (1981) (unemployment compensation regulations); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (compulsory school attendance laws); *Sherbert v. Verner*, 374 U.S. 398 (1963) (unemployment compensation regulations).



other students to meet. *Widmar v. Vincent*, 454 U.S. 263 (1981); cf., *Bender v. Williamsport Area School District*, 563 F. Supp. 697 (M.D. Pa., 1983) (free speech analysis of *Widmar* protects equal access for high school students seeking to meet for religious speech during extracurricular activity period), *appeal argued*, C.A. No. 83-3284 (3d Cir., Jan. 24, 1984).

Section 16-1-20.1 of the Alabama Code authorizes public school teachers to announce a period of silence not to exceed one minute at the commencement of the school day for meditation or voluntary prayer.<sup>2</sup> This section accommodates a different spiritual need than the need for religious instruction involved in *Zorach*. Specifically, Section 16-1-20.1 accommodates the need that many students feel to pray during the school day.

This need to pray in school is no less compelling than the need for religious instruction in *Zorach*. For example, a Protestant student may very well feel a strong need to pray at school during the school day in order to commit his studies and other school activities to the authority and guidance of God.<sup>3</sup> Protestants make it a practice to pray "[i]n connection with any important and difficult duty," including business, family life, chari-

<sup>2</sup> Ala. Code § 16-1-20.1 (Cum. Supp. 1982) provides that:

At the commencement of the first class of each day in all grades in all public schools, the teacher in charge of the room in which each such class is held may announce that a period of silence not to exceed one minute in duration shall be observed for meditation or voluntary prayer, and during any such period no other activities shall be engaged in.

<sup>3</sup> See, e.g., *Proverbs* 16:3 ("Commit thy works unto the Lord, and thy thoughts shall be established."); *Proverbs* 3:5-6 ("Trust in the Lord with all thine heart; and lean not unto thine own understanding. In all thy ways acknowledge him, and he shall direct thy paths.").

table activity, and other similar pursuits.<sup>4</sup> A silent,<sup>5</sup> brief prayer<sup>6</sup> offered at the time one faces the "important duty" permits the Protestant believer to pray about that duty when it is most clearly in mind and when he or she is motivated by the "importance of the moment."<sup>7</sup> For the Protestant public school student, classroom instruction and studies surely are among the most difficult duties he or she will face at that stage of life, and thus are prime candidates for brief, silent prayer.

The importance of silent prayer in a number of other religions indicates that students of other faiths may similarly consider a brief, silent prayer during the school day a significant spiritual need. One author has concluded that "[r]eligious silence—that is, silence as a form of prayer, meditation, or spiritual exercise—has been practiced by some at all times and places and in all periods

<sup>4</sup> 7 *The Pulpit Commentary*, Ch. II, 1-8 at 13-14 (H.D.M. Spence & J. Exell). Another Bible commentary widely used among Protestants makes the point as follows:

When you have got any arduous undertaking on hand or a heavy piece of business, do not touch it till you have breathed your soul out in a short prayer.

<sup>5</sup> *The Biblical Illustrator*, Ch. II at 33 (J. Exell).

The New Testament is replete with examples of such prayers. For example, the Apostles prayed immediately before choosing a disciple to replace Judas, *Acts* 1:24, and immediately before sending Paul and Barnabas out as missionaries, *Acts* 13:3. Christ prayed immediately before choosing his disciples, *Luke* 6:12-16, and immediately before the events pertaining to his crucifixion, *Luke* 22:39-46.

<sup>6</sup> 7 *The Pulpit Commentary*, Ch. II, 1-8 at 13 ("The worth and efficacy of prayer spring not from the words, but the principles and feelings they represent. It is ever what passes in the mind and heart which makes prayer to be prayer").

<sup>7</sup> *Id.* ("Much may be expressed or implied in a few words; how much love, or trust, or longing! In like manner much meaning may be in a short prayer").

<sup>7</sup> 7 *The Pulpit Commentary*, Ch. II, 1-8 at 13.

of religious history.”<sup>8</sup> Catholic students, for example, are instructed as to the value of silent prayer by the example of St. Augustine, who experienced a mystical vision of God during a “hushed” silence,<sup>9</sup> and the teaching of St. Gregory of Nazianzus, who said “[t]o speak of God is an exercise of great value, but there is one that is worth much more, namely to purify one’s soul before God in silence.”<sup>10</sup> A Jewish student may have a similar view of the importance of silent prayer given the practice in that religion of saying the Amidah, a silent prayer, at least three times every day,<sup>11</sup> and the numerous references in the Old Testament which commend the practice of silent prayer.<sup>12</sup>

Alabama’s decision to authorize a brief quiet time at the commencement of the school day is a reasonable means of accommodating the spiritual needs of these students to pray in school during the school day. Unlike

<sup>8</sup> Whittier, *Silent Prayer and Meditation in World Religions*, Congressional Research Service, May 27, 1983 at 7 (quoted in S. Rep. No. 98-347, 98th Cong., 2d Sess. 37). This author includes Hinduism, Buddhism, Islam and Shintoism among the religions that practice some form of silent prayer. *Id.*

<sup>9</sup> *Confessions of St. Augustine*, Book 9, Section X.

<sup>10</sup> St. Gregory of Nazianzus, *Orations*, 26 (quoted in S. Rep. No. 98-347, 98th Cong., 2d Sess. 35 (1984)).

<sup>11</sup> Report of the Senate Committee on the Judiciary on the School Prayer Constitutional Amendment, S. Rep. No. 98-347, 98th Cong., 2d Sess. 35 (1984).

<sup>12</sup> For example, one of the Old Testament references most clearly pertinent in the present context is *Nehemiah* 2:1-5, where Nehemiah offered a silent prayer immediately before explaining to King Artaxerxes why it was important that he be granted permission to visit Jerusalem. Nehemiah felt it necessary to offer this prayer even though he previously had prayed at length about the matter. See *Nehemiah* 1:3-11. See also, *Zechariah* 2:13 (“Be silent, o all flesh, before the Lord: for he is raised up out of his holy habitation”); *Psalms* 46:10 (“Be still and know that I am God”); *Zephaniah* 1:7 (“Hold thy peace at the presence of the Lord God”).

the cacophony of noise and the bustling of activity on the school bus, in the lunchroom, or on the playground, a brief quiet time in the classroom allows a quiet atmosphere for silent prayer, if a student chooses. Unlike the instructional periods of the school day, a brief quiet time affords an opportunity for prayer when the state is not directing the student’s mind toward his secular studies.

### CONCLUSION

For the reasons stated above, this Court should find Section 16-1-20.1 of the Alabama Code a reasonable means of accommodating the spiritual needs of public school students to pray during the school day, and treat this section in the same constitutionally favorable manner with which this Court treated the religious accommodation in *Zorach v. Clauson*.

Respectfully submitted,

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